



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

September 11, 1950

Hon. John Ben Shepperd  
Secretary of State  
Austin, Texas

Opinion No. V-1104

Re: Whether corporation may  
be chartered under Sub-  
division 105, Art. 1302,  
V.C.S., to furnish  
"recreational" facilities  
on a charitable and educa-  
tional basis.

Dear Sir:

Your recent request for an opinion asks whether the proposed Weslaco Recreation Association is required to be incorporated under Section 9 of Article 1302, Vernon's Civil Statutes, rather than under Subdivision 105 of that Article authorizing corporations to be formed for "Religious, Charitable, Literary, Scientific or Educational" purposes.

The proposed charter states its purpose to be:

"The purpose for which it is formed is to support charitable and educational endeavors for the benefit of the area surrounding the community of Weslaco, Texas, by providing wholesome recreation for children of school age during vacation time, especially, and throughout the year on a limited basis, and to provide limited facilities for adult recreation throughout the year, as authorized by Subdivision 105 of [Article 1302, V.C.S.]."

You state that, in view of opinions of former Attorneys General, cited in Attorney General Opinion O-1171 (1939), you conclude that this corporation may only be chartered under Subdivision 9 of Article 1302 authorizing corporations

"to support and maintain bicycle clubs, and other innocent sports."

You suggest that the activity recited in the quoted purpose clause is not primarily "educational" although you recognize the broad connotation of that term indicated in Conley v. Daughters of the Republic, 106 Tex. 80, 156 S.W.197 (1913), where it is stated that the term "education" as used

in the statute includes

"In its broadest sense, --- not merely the instruction received at school or college, but the whole course of training, moral, intellectual and physical; it is not limited to the ordinary instruction of the child in the pursuit of literature."

At the outset we direct your attention to the fact that the organization proposes to support charitable and educational endeavors by providing "recreation" for school children and adults. Such a purpose is not synonymous with supporting sports clubs or sports activities, although it may include the support of sports as a recreation. It might also include other forms of recreation not commonly denominated "sports".

We see no reason why "sports" or "recreation" may not be supported on a charitable or educational basis. Subdivision 9 is designed to authorize other than purely charitable or educational enterprises supporting "innocent sports." Subdivision 105 is, of course, much broader than Subdivision 9 and may include activities set out in Subdivision 9 maintained, however, on a charitable or educational basis.

The prior opinions referred to point out that to qualify as a corporation whose purpose is to support educational endeavors, education must be the primary object. Incorporation under such a charter, therefore, limits the activities of the corporation to those which are primarily educational. The fact that such a corporation might later deviate into activities outside or beyond its corporate powers does not prevent its incorporation under such limitations. The stated purpose here is twofold, however, and such a corporation is not limited to activities which are primarily educational if they are in fact charitable.

You are, therefore, advised that the subject corporation may be chartered under Subdivision 105. Its activities will, however, be limited as indicated.

SUMMARY

A corporation whose purpose is to support charitable and educational endeavors in a community by providing vacation time recreation for children of school age and limited recreational facilities for adults may be incorporated under Subdivision 105 of Article 1302, V.C.S. Such activities must be charitable or primarily educational in fact.

Yours very truly

APPROVED:

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